



**Post Office Box 9010 Addison, Texas  
75001-9010  
5300 Belt Line Road  
(972) 450-7000 Fax: (972) 450-7043**

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## **AGENDA**

### **SPECIAL MEETING OF THE CITY COUNCIL**

**AND / OR**

### **WORK SESSION OF THE CITY COUNCIL**

**6:00 PM**

**November 17, 2014**

### **ADDISON TOWN HALL**

**5300 BELT LINE RD., DALLAS, TX 75254**

**6:00 PM WORK SESSION**

**7:30 PM SPECIAL MEETING**

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### **WORK SESSION**

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- WS1 Discussion regarding the municipal court judges and reappointment for the presiding Judge and Associate Judge.

#### **Attachments**

Memo & Resume

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- WS2 Discussion regarding the parking at the Addison Walk shopping center located at 5000 Belt Line Road.

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- WS3 Discussion regarding the evaluation of the City Manager.
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- 
- WS4 Presentation and discussion regarding health insurance options for Town of Addison employees for calendar year 2015.
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## **SPECIAL MEETING**

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- S1 Discussion, consider and take action authorizing the City Manager to enter into agreement with Aetna Life Insurance Company to provide health insurance coverage to Town of Addison employees for calendar year 2015.

### **RECOMMENDATION:**

Administration recommends approval.

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- S2 Discussion and take action regarding an Ordinance approving and authorizing the City Manager to execute a Developer Participation Agreement between the Town and Sky B&B, LLC, a Texas limited liability company, in connection with the relocation and construction of certain public improvements at Addison Airport (including water, storm water, and sanitary sewer infrastructure improvements) in an area located generally west of the intersection of Addison Road and Airport Parkway, and authorizing the expenditure by the Town for the relocation and construction of such improvements of an amount not to exceed 30% of the total construction contract price, subject to final review and approval of the City Manager and the City Attorney.

### **RECOMMENDATION:**

Administration recommends approval.

### **Attachments**

Council Memo

Ordinance

Developer Participation Contract

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- S3 Discussion and take action regarding a First Amendment to Ground Lease between the Town and Sky B&B, LLC, a Texas limited liability company, regarding property at Addison Airport located generally west of the intersection of Addison Road and Airport Parkway, subject to final review and approval of the City Manager and City

Attorney.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

First Amendment to Ground Lease

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- S4      Discussion and take action regarding a temporary construction easement between the Town, as grantor, and Sky B&B, LLC, a Texas limited liability company, as grantee, regarding access to and use of certain land at Addison Airport located generally west of the intersection of Addison Road and Airport Parkway for the construction and installation by grantee of building improvements within the Airport and the temporary storage of grantee's construction materials and equipment used in connection therewith, subject to final review and approval of the City Manager and the City Attorney.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

Temporary Construction Easement

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Adjourn Meeting

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Posted:

Matthew McCombs, November 14, 2014, 5:00pm

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES.  
PLEASE CALL (972) 450-7090 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

## **Special Meeting and Work Session**

**WS1**

**Meeting Date:** 11/17/2014

**Council Goals:** Maintain and enhance our unique culture of creativity and innovation.  
Continue to attract, hire, develop, and retain great employees

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### **AGENDA CAPTION:**

Discussion regarding the municipal court judges and reappointment for the presiding Judge and Associate Judge.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

N/A

### **RECOMMENDATION:**

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### **Attachments**

Memo & Resume

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Cheryl Delaney  
Deputy City Manager  
PO Box 9010  
Addison, Texas 75001

Main: 972-450-7000  
Direct: 972-450-7036  
Fax: 972-450-7043  
[cdelaney@addisontx.gov](mailto:cdelaney@addisontx.gov)

## **- MEMORANDUM -**

To: Mayor & Town Council  
From: Cheryl Delaney, Deputy City Manager  
CC: Lea Dunn  
Date: November 14, 2014  
Re: Re-appointment of Judge & Associate Judge

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Attached are the resumes for the Judge and Associate Judge. These positions are up for re-appointment for a two year term. A presentation regarding court operations and practices will be discussed on the November 17th work session. Re-appointment and contract renewal of the Judge and Associate Judge will be held on the November 25th council meeting.

Please contact me if you have any questions.

LAW OFFICES OF  
**LARRY B. DWIGHT**

1201 NORTHLAKE DRIVE  
RICHARDSON, TEXAS 75080-4814

TEL:(214) 725-6304  
FAX:(972) 235-3973  
Email [ldwight@ix.netcom.com](mailto:ldwight@ix.netcom.com)

November 14, 2014

Lea Dunn, City Manager  
Town of Addison  
5300 Belt Line Road  
Addison, TX 75001

Dear Ms Dunn,

Per our recent conversation I am attaching a copy of my resume. The Town's Code of Ordinances requires that Judges must be reappointed every two years. The ordinance provides other requirements.

- **Sec. 26-35. - Judges of court.**

(a)

The municipal court of record shall be presided over by a judge, who shall be known as the "municipal judge." The judge shall be appointed by ordinance for a term of two (2) years and shall be entitled to a salary set by the city council. The amount of the judge's salary may not be diminished during the judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.

Also, the Texas Gov't Code Sec 29.005 Term of Office provides:

"The judge of a municipal court serves for a term of office of two years ..."

Our current appointment ends December 31, 2014.

I originally took office on April 6<sup>th</sup>, 1986, 28 years ago. My duties are divided between acting as a Municipal Judge and a Magistrate for Dallas County. My duties as Municipal Judge include reviewing judgments and signing, review warrants and sign, preside over hearings for attorney, pretrial, Spanish, Juvenile and first appearance dockets. I also preside over trials before the court and jury trials. This includes reviewing the law and procedures and setting procedures for the clerks to follow. We have window court where I will meet with the accused and explain their options in an attempt to work matters out without the necessity of setting them for another day in court.

As Magistrate I review and sign arrest warrants and search warrants presented to me for Class B and above offenses. In addition, I given warnings necessary to out of county prisoners held on Class C warrants.

During that time some of my accomplishments have been:

- The assisted in implementing the software program used until 1999.
- I assisted and helped implement our current software program in 1999 including reviewing all charge codes, the fine and cost associated with them, reviewing all complaints to conform to existing complaints. Over the years I have implemented the legislative changes to the software. I assisted in changes in reports for the Office of Court Administration reports and reports to the Dept. of Public Safety.
- I participated in writing two RFP's for new software including the current one being considered. I have worked with Paula and IT to assure the proper software is implemented.
- I worked with Paula and IT to install a on line payment portal for paying citations on line or through a telephone portal. Later we modified the web payment to accept partial payments on line for those who are on a payment plan with the court and to allow a person to sign up for Defensive Driving School. As far as we know this was a first in the State of Texas to permit both of the actions. This included drafting the flow charts and instructions on the web as well as guiding our software vendors through the changes necessary to permit the changers to be made.
- Assisted IT and PD in implementing the APS electronic citation writer and later the Brazos electronic citation writer.
- I worked closely with CID to propose and implement a method to remotely sign search and arrest warrants. This included evaluating software to capture signatures and videos of the officer signing the documents. This has reduced the amount of time and travel for officers needing these legal writs.
- After we reduced to only one associate judge I assumed the weekend duty of the other judge without any change in compensation.

If you need anything further, please let me know.

Yours truly,

Larry B. Dwight

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**LARRY B. DWIGHT**  
1201 NORTHLAKE DRIVE  
RICHARDSON, TEXAS 75080-4814

*Work History*

April 6, 1986 to present      Municipal Court Judge for the Town of Addison  
Duties included presiding over trials and hearings as well as magistrating  
prisoners in jail.

1987 to present                      Maintain a small private practice with existing clients.

1981 to 1987                      Staff Attorney at R. Jack Ayres Jr. acting as manager  
of the office. The firm was engaged primarily in complex civil litigation.

1973 to 1981                      Partner in Moore, Crutsinger and Dwight which firm  
practiced intellectual property law. Prepared applications for patents, trademarks  
and copyrights

*Professional Licenses held:*

1974                      Licensed to practice before the US Patent and Trademark Office

Dec. 4, 1973 Licensed to practice in the State of Texas.

I am licensed to practice before the United States Supreme Court, Northern  
District of Texas and the Fifth Circuit Court of Appeals.

*Education:*

8/19/1973                      Graduated Baylor University School of Law JD  
9/1/1968 to 5/20/71 Attended University of Texas at Austin studying Electrical  
and Architectural Engineering.



U.H. (WOODY) SPECHT  
ATTORNEY & COUNSELOR AT LAW

EDUCATIONAL BACKGROUND

University of Texas School of Law, Austin, Texas, J.D. Degree, 1965  
Texas Tech University, Lubbock, Texas, B.S. Degree, 1962  
Federal Bureau of Investigation Training Academy and National Law Institute,  
Quantico, Va., 1965 and 1985, respectively.

PROFESSIONAL EXPERIENCE

Associate Municipal Judge, Town of Addison, Texas, 1994 - Present.  
Legal Counsel, City of Carrollton, Texas, 2002 - 2012  
Private practice of law, 1990 - 2002, 2012 - Present  
Special Agent, Federal Bureau of Investigation, 1965-1990, with administrative and  
Supervisory responsibilities in the following areas:  
1. Chief Division Counsel, FBI, Dallas, Texas, and Newark, N.J., 1971-1990.  
2. FBI spokesperson and media liaison for the Dallas Region, 1978-1990.  
3. Training Coordinator for all FBI sponsored training programs.  
4. FBI National Academy training coordinator.  
5. FBI Principal Hostage Negotiator. 1975-1990.

PROFESSIONAL ASSOCIATIONS

State Bar of Texas; Admitted to practice before The Supreme Court of the United States  
of America and the United State District Courts for the Eastern and Northern  
District of Texas.

## **Special Meeting and Work Session**

**WS2**

**Meeting Date:** 11/17/2014

**Council Goals:** Brand Protection and Enhancement

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### **AGENDA CAPTION:**

Discussion regarding the parking at the Addison Walk shopping center located at 5000 Belt Line Road.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

Several restaurants within the Addison Walk shopping center have indicated that customers are experiencing difficulty finding parking when they wish to dine at their restaurant. The challenge tends to occur Monday-Friday during lunch from 11:30 am-1 pm and during the dinner service from 6:30 pm-9 pm. In addition, Saturday evenings tend to be a challenge. Customers circle the East end of the center looking for parking which leads to a loss of business to some of the restaurants when their customers cannot find convenient parking. Staff has observed, through spot checks, that during these busy times, the parking at the East end of the shopping center will fill up while the West end has a large number of available spaces in both the front and rear parking lots. Lazaranda and Kenny's Wood Fired Grill have partnered to provide valet parking Thursday-Saturday to their customers as well as anyone else who would like to use the valet service. The property management has tried to alleviate the parking problem by, at various times, offering the tenant employees offsite parking through the valet service and mandating that employees park in the rear parking lot. These two solutions have not been embraced by the employees. The Town would like to help find a solution to this parking issue.

### **RECOMMENDATION:**

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**Special Meeting and Work Session**

**WS3**

**Meeting Date:** 11/17/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Discussion regarding the evaluation of the City Manager.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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## **Special Meeting and Work Session**

**WS4**

**Meeting Date:** 11/17/2014

**Council Goals:** Mindful stewardship of Town Resources.  
Maintain and enhance our unique culture of creativity and innovation.  
Continue to attract, hire, develop, and retain great employees

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### **AGENDA CAPTION:**

Presentation and discussion regarding health insurance options for Town of Addison employees for calendar year 2015.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

N/A

### **RECOMMENDATION:**

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## **Special Meeting and Work Session**

**S1**

**Meeting Date:** 11/17/2014

**Council Goals:** Mindful stewardship of Town Resources.  
Maintain and enhance our unique culture of creativity and innovation.  
Continue to attract, hire, develop, and retain great employees

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### **AGENDA CAPTION:**

Discussion, consider and take action authorizing the City Manager to enter into agreement with Aetna Life Insurance Company to provide health insurance coverage to Town of Addison employees for calendar year 2015.

### **FINANCIAL IMPACT:**

There would be no financial impact to the Town over the current contribution for health insurance.

### **BACKGROUND:**

In 2004, the Town entered into contract with Blue Cross Blue Shield of Texas (BCBSTX) to provide group health insurance coverage for its employees. Over the years due to the rising cost of health insurance and several large unexpected claims, the rates have steadily increased.

In our efforts to ensure we have a competitive and sustainable benefits program, the City Manager's office created a benefits committee, which includes employees from various Town departments and two Council liaisons to review industry best practices regarding benefit and wellness options for Town employees. After receiving the 2015 renewal from BCBSTX which reflected a 19% increase of our current rates, the committee recommended that the Town take the health insurance contract out for bid. We received four responses which included plan design changes, greater cost sharing between the Town and its employees and the elimination of the HMO option.

Based on the review of bid responses with administration and the benefits committee, administration recommends entering into contract with Aetna Life Insurance Company to provide health insurance for calendar year 2015 for Town employees. This option will provide a sustainable approach to health insurance for 2015 with more cost sharing between the Town and its employees while partnering with a tier 1 health care provider for our employees.

### **RECOMMENDATION:**

Administration recommends approval.

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## **Special Meeting and Work Session**

**S2**

**Meeting Date:** 11/17/2014

**Council Goals:** Create a vision for the airport to maximize the value  
Infrastructure improvement and maintenance

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### **AGENDA CAPTION:**

Discussion and take action regarding an Ordinance approving and authorizing the City Manager to execute a Developer Participation Agreement between the Town and Sky B&B, LLC, a Texas limited liability company, in connection with the relocation and construction of certain public improvements at Addison Airport (including water, storm water, and sanitary sewer infrastructure improvements) in an area located generally west of the intersection of Addison Road and Airport Parkway, and authorizing the expenditure by the Town for the relocation and construction of such improvements of an amount not to exceed 30% of the total construction contract price, subject to final review and approval of the City Manager and the City Attorney.

### **FINANCIAL IMPACT:**

The financial responsibility is 30% of the total construction contract price.

### **BACKGROUND:**

See attached memo.

### **RECOMMENDATION:**

Administration recommends approval.

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### **Attachments**

Council Memo

Ordinance

Developer Participation Contract

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William M. Dyer  
Real Estate Manager  
16051 Addison Road  
Suite #220  
Addison, Texas 75001

Main: 972-392-4850  
Direct: 972-392-4856  
Fax: 972-788-9334  
bill.dyer@addisonairport.net

## - M E M O R A N D U M -

To: Lisa Pyles  
From: Bill Dyer  
CC: Joel Jenkinson  
Date: November 13, 2014  
Re: November 17, 2014 Agenda Items S2, S3, S4

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Airport Management is requesting the Town Council's consideration and consent of the following matters relating to the Sky B&B, LLC ("Sky") ground lease relationship:

- **Development Participation Contract:** to authorize the city manager to execute on behalf of the Town the proposed Development Participation Contract (substantially in the form of the attached) with Sky relating to the relocation of city utilities and to authorize the Town's expenditure not to exceed thirty percent (30%) of the total contract price;
- **First Amendment to Ground Lease:** to authorize the city manager to execute on behalf of the Town the proposed First Amendment to the Sky B&B, LLC Ground Lease (substantially in the form of the attached);
- **Temporary Construction Easement:** to authorize the city manager to execute on behalf of the Town the proposed construction easement (substantially in the form of the attached) requested by Sky to facilitate the construction of the corporate hangar facility.

The city attorney has reviewed each of the proposed agreements and finds them acceptable for the Town's purposes.



### **Background Information:**

The Town first entered into a ground lease arrangement with Sky B&B, LLC (“Sky”) in April of this year wherein Sky agrees, among other things, to construct a 33,000 square foot corporate hangar facility for their corporate fleet of aircraft on 3.03 acres west of the Airport Parkway/Eddie Rickenbacker Drive intersection at Addison Airport. The construction value of the building improvements are to be in excess of \$3 million dollars.

The Town agreed to relocate or cause to relocate the city’s utilities serving the site, in order to enter into the ground lease arrangement. After publically advertising solicitations for proposals to provide the materials and complete the scope of work, the Town was unsuccessful in attracting a qualified bidder. Because Sky has already commenced construction of their new hangar, time has become critical with any further delay relocating the utilities would likely interfere with Sky’s construction schedule.

To remedy the situation, Town staff has proposed and Sky has agreed, subject to the Town Council’s consent, to enter into the proposed Developer Participation Contract pursuant to Section 212.071 of Subchapter C of the Local Government Code. The Development Participation Contract allows the City to construct public improvements (e.g. utilities) without having to comply with the competitive bid procedures otherwise required by law. Under the contract, Sky will construct, at its expense, the necessary utility improvements provided the City shares in thirty percent (30%) of the total project cost, its statutory limit.

In consideration of Sky’s contribution towards improving the public utilities at the Airport, Airport Management and Town staff is recommending the Town execute the proposed First Amendment to Ground Lease. As proposed, the First Amendment amends certain key dates given in the ground lease agreement to offset the two-month delay attributed to FAA withholding their final determination of Sky’s Notice of Proposed Construction or Alteration (FAA Form 7460-2).

Finally, Sky has requested a temporary construction easement to help facilitate the construction of their corporate hangar facility and the safe keeping of materials and equipment during construction. Upon cessation of need and use, Sky is to return the land subject to the temporary easement to its pre-existing condition or as otherwise acceptable to the Town.

### **Conclusion and Recommendation:**

**Airport Management and Town’s staff recommends the Town give its consent to the aforementioned agreements as proposed subject to the city attorney’s review and oversight.**

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AUTHORIZING THE EXECUTION OF A DEVELOPER PARTICIPATION CONTRACT BETWEEN THE TOWN OF ADDISON AND SKY B&B, LLC FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVMENTS WITHIN ADDISON AIRPORT AND BEING GENERALLY REFERRED TO AS UTILITY IMPROVEMENTS WITHIN THE CITY; AUTHORIZING THE CITY TO APPROPRIATE FUNDS TO PARTICIPATE IN THE CONSTRUCTION OF SUCH IMPROVEMENTS PURSUANT TO THE SAID CONTRACT; AND PROVIDING FOR PAYMENT; PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. That "Developer Participation Contract" by and between the Town of Addison, Texas (the "City") and Sky B&B, LLC, a Texas limited liability corporation, a true and correct copy of which is attached hereto, is hereby approved. The Developer Participation Contract is and qualifies as a developer participation contract pursuant to Subchapter C, Chapter 212, Tex. Loc. Gov. Code. As set forth in the Developer Participation Contract, the maximum amount to be expended by the City shall not exceed thirty percent (30%) of the total construction contract price of the project described in the Developer Participation Contract.

Section 2. The City Manager is authorized to execute the Developer Participation Contract on behalf of the City.

Section 3. This Ordinance shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City council of the Town of Addison, Texas this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Todd Meir, Mayor

ATTEST:

By:\_\_\_\_\_  
Mathew McCombs, City Secretary

APPROVED AS TO FORM:

By:\_\_\_\_\_  
John Hill, City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

## DEVELOPER PARTICIPATION CONTRACT

This Developer Participation Contract (the "Agreement") is entered into this the \_\_\_\_th day of \_\_\_\_, 2014 (the "Effective Date") by and between the Town of Addison, Texas, a Texas home-rule municipality (the "City") and Sky B&B, LLC, a Texas limited liability company (the "Company") (the City and the Company are sometimes referred to herein together as the "Parties" and individually as a "Party").

### Recitals:

**WHEREAS**, the City is the owner of Addison Airport (the "Airport"), a public general aviation reliever airport located within the City; and

**WHEREAS**, the Company desires to enter into, or has entered into as of the date of this Agreement, a ground lease (the "Ground Lease") with the City (as landlord) of a tract of land approximately 3.03 acres in size and located within the Airport (the "Ground Lease Property") (the Ground Lease Property being described and depicted in Exhibit 1 attached hereto and incorporated herein); and

**WHEREAS**, in connection with and pursuant to the Ground Lease, the Company (as tenant) intends to construct on the Ground Lease Property a \_\_\_\_\_ square foot corporate hangar facility together with \_\_\_\_\_ square feet of attached executive office and shop space and related off-street parking and dedicated aircraft apron (the "Development"); and

**WHEREAS**, the existing water, storm water and sanitary sewer infrastructure owned by the City, serving the Development and other portions of the Airport, must be relocated and increased in its capacity to accommodate the construction of the Development and the redevelopment of other portions of the Airport; serving a benefit to the general public; and

**WHEREAS**, in connection with the Development and in accordance with this Agreement, the Company desires to make and to pay for relocation and improvement of the Cities water, storm water and sanitary sewer utility infrastructure as described in Exhibit 2 attached hereto and incorporated herein (the "Utility Improvements"), and the City desires to participate in the cost of such Utility Improvements as set forth herein.

**NOW, THEREFORE**, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and the Company do hereby agree as follows:

**Section 1.     Incorporation of Recitals.** The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2.     Term.** This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so (the "Effective Date"). This Agreement shall remain in full force and effect from the Effective Date until the City and the Company have

completed their respective obligations hereunder or has been earlier terminated by the mutual agreement of the City and the Company in writing or otherwise terminated as set forth in this Agreement (the "Term").

**Section 3. Utility Improvements.** The Utility Improvements, as described and defined in the Recitals above, shall be constructed by Company in accordance with and subject to the following:

A. Design; Construction; Partial Reimbursement. Company shall construct the Utility Improvements as described in this Agreement in accordance with and subject to (i) the zoning for the Airport, (ii) all federal, state, and local ordinances, laws, statutes, standards, rules, regulations, codes, orders, directives, permits, plans or policies, including, without limitation, the Federal Aviation Administration ("FAA"), the Texas Department of Transportation ("TxDOT"), and the Town of Addison, Texas, and any other governmental entity or agency having jurisdiction over the Airport, (iii) all grant agreements and grant assurance, and (iv) all of the terms and conditions of this Agreement.

1. *Design.* The plans for the design and construction of the Utility Improvements (the "Plans") have been previously completed and provided by Cobb Fendley & Associates, professional engineer registered and licensed to provide its services in the State of Texas (the "Design Professional"), and the same have been submitted to and approved by the City in accordance with the City's normal and usual practices and processes for reviewing and approving design plans for a development. A true and correct copy of the Plans are on file in the office of the City's Director of Public Works (the "Director"). Approval of the Plans by the City does not constitute and is not a release of the responsibility and liability of the Company or the Design Professional for the accuracy and competency of the same, and such approval is not an assumption of or an indemnification for such responsibility or liability by the City for any defect, error or omission in the Plans, the responsibility and liability for the Plans being solely that of the Company and the Design Professional.

2. *Construction.*

(a) Following the Effective Date, Company shall promptly enter into a contract or contracts with a contractor or contractors (each, a "Contractor"), to construct the Utility Improvements (the "Utility Construction Contract" or "Contract"). The Contract (and any change orders thereto) shall be submitted to the City for its review and consideration prior to execution, and upon execution, Company shall provide the City with a true and correct copy of the Contract (and any change orders executed following such execution). In the event the City finds that the Contract amount (including any change orders thereto) is excessive, the City shall notify the Company and the Company shall seek to reduce the cost of the Contract (and any change orders thereto) (the Contract amount is sometimes referred to hereinafter as the "Utility Construction Cost"). Upon entering into the Contract, the construction of the Utility Improvements shall be promptly commenced and thereafter diligently prosecuted to completion, but in any event not later than one (1) year following the Effective Date. All work on the Utility Improvements shall be performed in a good and workmanlike manner and in accordance with the Plans and all applicable laws, ordinances, rules, standards, regulations, and codes.

(b) Prior to any work on the Utility Improvements, Company shall provide to the City surety bonds guaranteeing the faithful performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Contract sum. Company shall pay or cause the Contractor or the subcontractor to pay the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City. Upon the final completion of the Utility Improvements and the acceptance thereof as set forth in Company or the Contractor shall submit a surety bond guaranteeing workmanship and materials for a period of one-year from the date of final acceptance of the Utility Improvements by the City. Company warrants and represents that it will repair or cause to be repaired any defects in the work herein contracted to be done and performed for a period of one (1) year from the date of the City's acceptance of all of the Utility Improvements. Company and the Town of Addison, Texas shall be named as joint obligees on all of such bonds.

(c) The Town of Addison, Texas shall be named as an additional insured on all liability insurance policies provided by the Contractor and any subcontractor.

(d) To the extent any of the Utility Improvements are located within public right-of-way or property owned by the City, the City hereby grants to Company a license to enter upon such public right-of-way or property for the sole and limited purpose of constructing the Utility Improvements. Company shall coordinate with the City and utility providers to minimize the possibility of damage to utilities and any disruption to users and tenants of the Airport within proximity of the construction area. Upon completion of the Utility Improvements, Company shall ensure that the Utility Improvements and the property on which the Utility Improvements were constructed are free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Company, any Contractor, or any subcontractor or material suppliers.

(e) Company shall timely pay the Contractor in accordance with the terms and conditions of the Contract. Company shall insure that all Utility Improvements are completed in a timely manner in accordance with the Utility Construction Contract. Company shall thoroughly inspect the work of the Contractor to guard the City against defects and deficiencies in the Utility Improvements without assuming responsibility for the means and methods used by the Contractor.

(f) The City has the right to inspect, test, measure or verify the construction work on the Utility Improvements, as the City deems necessary.

(g) Company shall keep the Director informed regarding the progress of the Utility Improvements construction. Company shall notify and provide documentation to the Director for the following events: (i) award of the Contract (including copies of bonds and insurance), (ii) notice to proceed, (iii) default of the Contractor (if it occurs), and (iv) completion of the Utility Improvements such that they are ready for inspection by the City. The Project shall not be considered finally complete until the Director has inspected the Utility Improvements and has issued a certificate of completion.

4. *Reimbursement.*

(a) Subject to all of the terms and conditions of this Agreement, the City shall reimburse Company a portion of the Utility Construction Cost paid by Company in an amount not to exceed (i) \_\_\_\_\_ Thousand and no/100 Dollars (\$\_\_\_\_\_.00), or (ii) thirty percent (30%) of the total Contract price, whichever is less (the "Reimbursement Amount"). In any event, the Reimbursement Amount paid by the City shall not exceed thirty percent (30%) of the total Contract price.

(b) Payment of the Reimbursement Amount shall be made in accordance with and is subject to the following:

(i) During the course of construction of the Utility Improvements, it is anticipated that the Contractor will, as portions of the work on the Utility Improvements are completed, submit to Company a request for a progress payment or an invoice (each being a "Contractor Invoice") for the applicable portion of the work completed (the "Applicable Completed Portion"). Following its receipt of a Contractor Invoice, Company shall submit to the City:

(A) a true and correct copy of the Contractor Invoice (together with all attachments, documents, and materials applicable thereto and such other information as the City may request in connection therewith), and

(B) an invoice for that portion of the Reimbursement Amount applicable to the Contractor Invoice (which shall not exceed thirty percent (30%) of the net amount of the Contractor Invoice (the amount of the Contractor Invoice actually paid by Company to the Contractor, e.g., the amount of the Contractor Invoice less any retainage withheld by Company), and shall show the total Contract price paid to the Contractor) (the "Reimbursement Invoice"). Each Reimbursement Invoice shall be accompanied by:

(1) a certification from Company that the Applicable Completed Portion for which a disbursement has been requested has been:

(y) completed in accordance with the Utility Construction Contract and with all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction (including, without limitation, the standards of the Americans with Disabilities Act of 1990), and with this Agreement, and

(z) paid for by Company in accordance with the Utility Construction Contract, and

(2) duly executed partial lien waivers from any Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the Applicable Completed Portion.

(ii) The Reimbursement Invoice shall also be accompanied by a copy of the Contractor's certificate of payment to subcontractors and material suppliers for work completed through the Applicable Completed Portion, and by a certificate (sealed by the Design Professional) from the Design Professional that the Applicable Completed Portion has been completed in accordance with the Utility Construction Contract.

(iii) Payment of the final portion of the Reimbursement Amount is further conditioned on and subject to the City's prior receipt from Company of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Utility Improvements.

(iv) Within thirty (30) days after the City's receipt of (a) a Reimbursement Invoice, (b) Company's certification that the Applicable Completed Portion has been completed as set forth above, and (c) other items which are to accompany the Reimbursement Invoice as set forth herein, and provided Company is not then in default of this Agreement beyond any applicable cure period, the City shall pay to Company the amount of the applicable Reimbursement Invoice, less five percent (5%) of such amount (the "City Retainage") (provided however, in any event that the cumulative amounts of such payments shall not exceed the Reimbursement Amount).

(v) Within thirty (30) days following the last of:

(A) the City's receipt from the Design Professional of the Design Professional's certification (sealed by the Design Professional) that the Utility Improvements have all been fully and finally completed in accordance with the Utility Construction Contract,

(B) the City's receipt of a written certification from Company that the Utility Improvements have been finally completed in accordance with all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction (including, without limitation, the standards of the Americans with Disabilities Act of 1990), and with this Agreement,

(C) the City's receipt of a written certification from Company that the final payment for the construction of the Utility Improvements has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same,

(D) the City's receipt from Company of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Utility Improvements, and

(E) final completion of the Utility Improvements and the City's acceptance thereof as set forth herein,

the City shall pay to Company the City Retainage, provided Company is not then in default of this Agreement beyond any applicable cure period, and such payment is subject to all of the terms and conditions of this Agreement (including that the total payments by the City hereunder shall not exceed the Reimbursement Amount). Payment of the City Retainage shall constitute

the last and final payment to be made by the City to Company pursuant to this Agreement, and completion of all of the City's obligations hereunder.

**B. Insurance.**

1. At all times, Company shall maintain minimum insurance coverages, described below. Company may satisfy this requirement through insurance provided by its Contractor.

- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
  - a. "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
  - b. The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.

Any subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. Company shall require its construction contractor(s) to require all subcontractors to carry insurance naming the Town of Addison, Texas as an additional insured and meeting all of the above requirements.

2. With reference to the foregoing insurance requirement, Company shall specifically endorse applicable insurance policies as follows:



- (a) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
- (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- (c) A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
- (d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
- (e) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
- (f) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (h) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (i) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Company and the City prior to the commencement of any work on the Utility Improvements (or within 15 days after the date of this Agreement if construction has already commenced), and shall contain provisions representing and warranting the following:

- (a) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Company shall furnish the Town of Addison with certified copies of all insurance policies.

3. Company shall require its construction contractor(s) to continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If

Company does not comply with this requirement, the Director, at the Director's sole discretion, may

- (a) immediately suspend Company from any further performance under this Agreement and begin procedures to terminate for default, or
- (b) purchase the required insurance with City funds and deducts the cost of the premiums from amounts due to Company under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

C. **INDEMNITY OWED BY COMPANY.**

1. Company covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and such elected officials, and officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an **"Addison Person"** and collectively the **"Addison Persons"**), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the **"Claims"**), that arise out of, result from, or relate to: (1) the services and work to be provided by Company under or in connection with this Agreement; (2) representations or warranties by Company under this Agreement; and/or (3) any other act or omission under or in performance of this Agreement by Company, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Company, or any other person or entity for whom Company is legally responsible, and their respective owners, officers, managers, employees, directors, agents, and representatives. **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

2. Company shall promptly advise the City in writing of any claim or demand against any Addison Person or Company related to or arising out of Company's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Company's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

3. The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Agreement, shall survive the termination or expiration of this Agreement.

#### **Section 4. Termination.**

A. Either party (the “non-defaulting party”) may terminate this Agreement in the event of default of this Agreement by the other party (the “defaulting party”) and a failure by the defaulting party to cure such default after receiving notice thereof from the non-defaulting party. Default shall occur if a party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the non-defaulting party shall deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 20th day following receipt of the notice; but if the default cannot with diligence be cured within the said 20 day period, if within such 20 day period the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter prosecutes the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity, not to exceed 40 days following the occurrence of the default(. The non-defaulting party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default to the non-defaulting party's satisfaction, the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, the non-defaulting party may terminate this Agreement, and the obligations of the parties hereunder shall end. The Director may give such notice on behalf of the City for purposes of this Agreement.

B. In addition to the provisions of subsection A. of this Section 4, the City may terminate this Agreement without notice or any opportunity to cure for any of the following reasons:

1. Insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, the Company.
2. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by the Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company.
3. Appointment of a receiver or trustee for all or substantially all of the assets of the Company.
4. Abandonment by the Company for a period of ten (10) days of the Utility Improvements project.
5. The Company is in default of any ground lease or other lease or arrangement with the Town of Addison.

C. In the event this Contract is terminated due to default of the Company or for any of the reasons set forth in subsection B. of this Section, or if the Company abandons the Utility Improvements project for a period of ten (10) days, either of which event is before the Contractor completes the construction of the Utility Improvements, the City reserves the right to continue the Contract and utilize any unexpended funds for this Agreement to reimburse the Contractor. In such event, Company shall have no claim for any other funds of the City.

## **Section 5. Miscellaneous.**

A. In connection with this Agreement and the matter set forth herein, all of Company's books and other records related to the Utility Improvements shall be available for inspection by the City at a location within the City as determined by the City. Company shall include in the Contract that the City has and reserves the right, upon notice, to inspect and make an audit of all books, records, accounts and other data of the Contractor relating to the construction of the Utility Improvements and performance of the Contract. The City further has the right to conduct inspections of all places where work is undertaken in connection with this Agreement.

B. Company is an independent contractor, and Company shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties; provided always however that the obligations and services of Company hereunder shall be provided in a manner consistent with all applicable standards and regulations governing the same. The City shall have no control or supervisory powers as to the detailed manner or method of Company's performance of the subject matter of this Agreement. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by Company shall be deemed employees or subcontractors of Company and shall not be considered employees, agents or subcontractors of the City for any purpose whatsoever. Company shall be solely responsible for the compensation of all such persons, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

C. Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.

D. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

E. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.

F. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

G. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

H. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.

I. Any notice and/or statement required and permitted to be delivered shall be deemed delivered upon receipt after depositing same in the United States mail, certified mail with return receipt requested, postage prepaid, or upon receipt by nationally recognized overnight courier, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties by notice under this subsection:

To City:

5300 Belt Line Road  
Dallas, Texas 75240-7606  
Attn: City Manager  
Email: ldunn@addisontx.gov

and

16051 Addison Road, #220  
Addison, Texas 75001  
Attn: Airport Director  
Email: jenkinson@addisonairport.net

To Company:

Sky B&B, LLC  
Mr. Timothy A. Mack, Manager  
3738 Oak Lawn Avenue  
Dallas, Texas 75219  
[tmack@mackmatheson.com](mailto:tmack@mackmatheson.com)

and

Holmes Firm PC  
14911 Quorum Drive  
Suite 340  
Dallas, Texas 75254  
Attn: Ronald L. Holmes  
Email: ron@theholmesfirm.com

J. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.

K. This Agreement supersedes all previous agreements regarding the matters set forth herein, and constitutes the entire understanding of the parties. Company shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Except for the obligations of Company under this Agreement, neither Company nor any other owner of the Property shall have any further obligations under the Master Facilities Agreement.

L. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

M. This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the Town of Addison, Texas. Without limiting the foregoing, this Agreement and all of its terms and provisions do not waive or release Company from the provisions and requirements of Chapter 14 - Aviation of the City's Code of Ordinances.

N. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

O. This Agreement shall be effective upon the date of the last of the City and Company to sign below, as reflected by the date of signing.

**IN WITNESS WHEREOF**, the City and Company have executed this Agreement.

**TOWN OF ADDISON, TEXAS**  
a home-rule municipality

**SKY B&B, LLC**  
a Texas limited liability company

By: \_\_\_\_\_  
Lea Dunn, City Manager

By: \_\_\_\_\_  
Timothy A. Mack, Manager

Date of signing: \_\_\_\_\_

Date of signing: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Matthew McCombs, City Secretary

## **EXHIBIT 1**

[DEPCTION AND DESCRIPTION OF GROUND LEASE PROPERTY AND THE UTILITY  
PROPERTY]

## **EXHIBIT 2**

[DESCRIPTION OF THE UTILITY IMPROVEMENTS]



## **Special Meeting and Work Session**

**S3**

**Meeting Date:** 11/17/2014

**Council Goals:** Create a vision for the airport to maximize the value

---

### **AGENDA CAPTION:**

Discussion and take action regarding a First Amendment to Ground Lease between the Town and Sky B&B, LLC, a Texas limited liability company, regarding property at Addison Airport located generally west of the intersection of Addison Road and Airport Parkway, subject to final review and approval of the City Manager and City Attorney.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

See memo from S2.

### **RECOMMENDATION:**

Administration recommends approval.

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### **Attachments**

First Amendment to Ground Lease

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## **FIRST AMENDMENT TO GROUND LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT** (this “Amendment”) is entered into to be effective as of, although not necessarily executed on, the \_\_\_\_ day of November, 2014 (the “Effective Date”), by and between **TOWN OF ADDISON, TEXAS**, a Texas home-rule municipality (“Landlord”), and **SKY B&B, LLC**, a Texas limited liability company (“Tenant”).

**WHEREAS**, Landlord and Tenant entered into that certain Ground Lease Agreement dated effective as of April 23, 2014 (as amended, the “Lease”), pursuant to which Tenant leases from Landlord approximately 3.03 acres at Addison Airport having a street address of 4641 Airport Parkway Drive, Addison, Texas; and

**WHEREAS**, any capitalized term used herein and not otherwise defined shall have the meaning ascribed thereto in the Lease; and

**WHEREAS**, Landlord and Tenant desire to set forth herein certain amendments to the Lease.

**NOW, THEREFORE**, for and in consideration of the recitals hereinabove and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree that the Lease should be, and hereby is, amended as follows:

1. **Term.** Subsection (i) of the first (1<sup>st</sup>) unnumbered paragraph of Section 2 of the Lease shall be and is hereby amended to delete the reference to “forty-eight (48)” and substitute in lieu thereof the words “fifty (50)”.

2. **Construction Commencement Date.** The second (2<sup>nd</sup>) sentence of Section 6 D. of the Lease shall be and is hereby amended to delete the (a) words “twenty-four (24)” and substitute in lieu thereof the words “twenty-six (26)” and (b) number “24” and substitute in lieu thereof the number “26”.

3. **Additional Amendments.** The Lease is amended by amending Section 3.A.1. and Section 16 to read as follows:

### *Amendment to Section 3.A.1.*

1. **Base Rent:** Tenant agrees to and shall pay Landlord annual rental for the Demised Premises in the amount of Eighty-five Thousand, Seven Hundred and Ninety-One Dollars (\$85,791.00), which amount shall be paid by Tenant in twelve equal monthly installments in advance on the first day of each calendar month (the “Base Rent”, which shall be adjusted as set forth herein). The first monthly payment or installment of Base Rent in the amount of Seven Thousand, One Hundred Forty-Nine and 25/100 (\$7,149.25) is due and payable on or before the Commencement Date. Thereafter, another payment or installment of the Base Rent, subject to adjustment as set forth below, shall be due and payable on the first day of each calendar month during the term hereof; however, after the first monthly payment of

Base Rent, payment of monthly Base Rent shall be abated for that period of time until the monthly Base Rent that would have been paid but for such abatement equals \$344,830.00. All Rent is due on the first of each month and is delinquent after the 10<sup>th</sup> day of each month and subject to the provisions of Section 39.

*Amendment to Section 16*

“Section 16. Utilities:

A. Except as may be otherwise agreed to by Landlord and Tenant, Tenant shall be responsible at Tenant’s sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

B. Tenant shall further be responsible for relocating or causing to be relocated all City or franchise utilities (water, sewer, gas and electrical service) as may be needed to provide service to the respective meter or terminal point as shown in the Design Plans for the Building Improvements (collectively, the “Utilities Relocation Work”). The Utilities Relocation Work shall be further described in and in accordance with a developer participation contract agreed to by Landlord and Tenant

4. **Effectiveness.** Except as expressly provided in this Amendment, the terms and provisions of the Lease, as previously executed by the parties, are hereby ratified and affirmed and shall continue to govern the rights and obligations of the parties and all provisions and covenants of the Lease, as herein amended, remain in full force and effect. The Lease and this Amendment constitute the entire understanding and agreement between Landlord and Tenant regarding the subject matter thereof and supersede all other prior written or oral understandings and agreements between Landlord and Tenant with respect thereto and shall constitute but one instrument.

5. **Time and Governing Law.** Time is of the essence of this Amendment and all of its provisions. The laws of the State of Texas and the United State of America shall govern the rights, remedies, and duties of the parties hereto and the validity, construction, enforcement, and interpretation hereof.

6. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7. **Illegality.** If any provision of this Amendment is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Amendment shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in

full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment effective as of Effective Date.

**LANDLORD:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Name: Lea Dunn  
Its: City Manager

**TENANT:**

**SKY B&B, LLC**

By: \_\_\_\_\_  
Name: Timothy A. Mack  
Its: Manager

## **Special Meeting and Work Session**

**S4**

**Meeting Date:** 11/17/2014

**Council Goals:** Create a vision for the airport to maximize the value

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### **AGENDA CAPTION:**

Discussion and take action regarding a temporary construction easement between the Town, as grantor, and Sky B&B, LLC, a Texas limited liability company, as grantee, regarding access to and use of certain land at Addison Airport located generally west of the intersection of Addison Road and Airport Parkway for the construction and installation by grantee of building improvements within the Airport and the temporary storage of grantee's construction materials and equipment used in connection therewith, subject to final review and approval of the City Manager and the City Attorney.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

See memo from S2.

### **RECOMMENDATION:**

Administration recommends approval.

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### **Attachments**

Temporary Construction Easement

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**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**After Recording Return To:**

**Real Estate Manager  
Addison Airport  
16051 Addison Road, Suite 220  
Addison, Texas 75001**

**TEMPORARY CONSTRUCTION EASEMENT**

**STATE OF TEXAS           §  
                                     §       **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF DALLAS       §****

**WHEREAS**, the **Town of Addison**, Texas, a Texas home-rule municipality ("Grantor"), is the record title owner of the Addison Airport, a description of which is set forth in Exhibit A attached hereto and incorporated herein (the "Airport"); and

**WHEREAS**, Grantor and **Sky B&B, LLC**, a Texas limited liability company, whose address is 3778 Oak Lawn Avenue, Dallas, Texas 75219, Dallas, Dallas County, Texas ("Grantee"), have entered into a certain Ground Lease Agreement dated April 23, 2014 (the "Ground Lease", a complete copy of which is available in the Grantor's archives) wherein, among other things, Sky B&B agrees to construct certain Building Improvements on the Demised Premises (as each term is defined in the Ground Lease) subject to the Ground Lease; and

**WHEREAS**, Grantor owns and controls two tracts of land adjacent to and abutting the demised premises shown and more fully described in Exhibit B ("Easement Area 1") and Exhibit C ("Easement Area 2") (collectively referred to the "Easements Areas") attached hereto and made a part hereof for all purposes; and

**WHEREAS**, it is necessary for Grantee, its successors and assigns (including by and through third parties and third party contractors) to use and access the Easement Areas in connection with Grantee's construction, placement, location, and installation of the Building Improvements and for the temporary storage of Grantee's construction materials and equipment used in connection with constructing the Building Improvements and, Grantor has agreed to provide Grantee, its successors, assigns and third parties, the temporary use of the Easement Areas necessary for the construction and installation of the Building Improvements and storage of Grantee's materials and equipment as set forth herein.

**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor does by these presents Grant and Convey

unto Grantee, its successors and assigns, a temporary construction easement and right to pass over, through, across and under the Easement Areas for the purposes set forth below.

The temporary construction easement shall only be used by Grantee, its successors and assigns, and their third-party contractors and subcontractors in connection with the construction, placement, location, and installation of the Building Improvements and for the storage of Grantee's materials and equipment in connection therewith. Further, Grantee, its successors and assigns, shall restore the Easement Areas (or as otherwise agreed to in writing by Grantor) to the condition that existed immediately prior to commencing construction of the Building Improvements and, or storage of Grantee's materials and equipment.

This temporary easement shall automatically expire on the earlier to occur of: (1) Final Completion as defined in the Ground Lease of construction, placement, location, and installation of the Building Improvements; or (2) upon such time Grantee agrees to surrender the need and requirement of one or both of Easement Area 1 or Easement Area 2.

The above and foregoing recitals and premises are incorporated into and made a part of this Temporary Construction Easement for all purposes.

TO HAVE AND TO HOLD unto the Town of Addison, Texas, its successors and assigns, as aforesaid, for the purposes and on the conditions set forth hereinabove, the easement and Easement Areas described above.

IN WITNESS WHEREOF, this instrument is executed on this the \_\_\_\_ day of \_\_\_\_\_, 2014.

**GRANTOR:**

**Town of Addison**

\_\_\_\_\_  
Lea Dunn, City Manager

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Lea Dunn, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**TO TEMPORARY CONSTRUCTION EASEMENT**

*[attach description of Addison Airport]*



**EXHIBIT B**  
**TO TEMPORARY CONSTRUCTION EASEMENT**

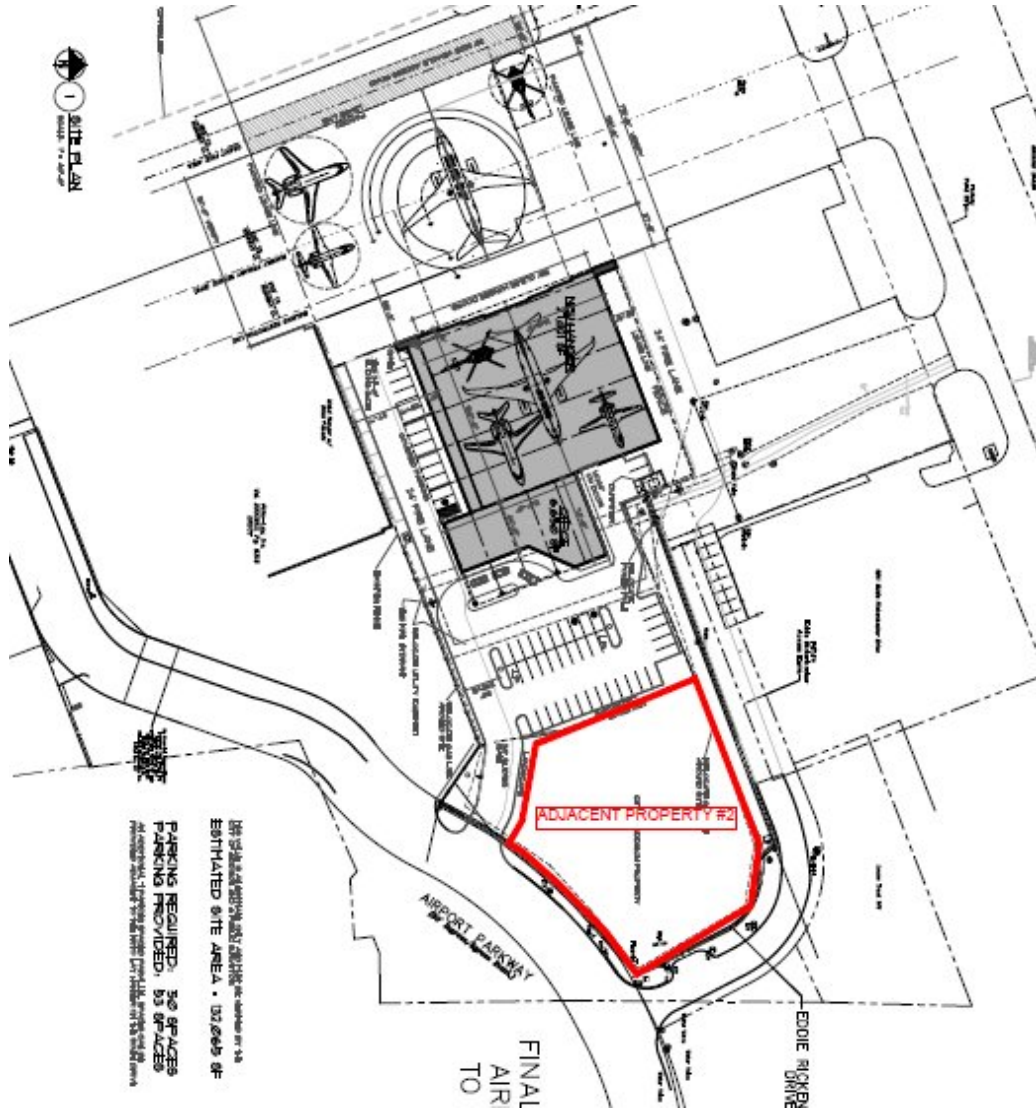
**Easement Area 1**

*[attach description of Easement Area 1]*

Note: Easement Area 1: is intended to be the same 24' wide Utility Easement required adjacent to and north of the Sky B&B lease boundary. The description is to be provided by the engineers.

**EXHIBIT C  
TO TEMPORARY CONSTRUCTION EASEMENT**

**Easement Area 2**



Shown Here as "Adjacent Property #2"